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25 **UNITED STATES DISTRICT COURT**
26 **DISTRICT OF NEVADA**

27 SUMMIT CANYON RESOURCES, LLC,

28 CASE NO.: 2:15-cv-00656-RFB-VCF

17 Plaintiff,

18 vs.

19 GEORGE A. TANKSLEY; LASHAWN
20 THOMPSON-TANKSLEY; FEDERAL
21 NATIONAL MORTGAGE ASSOCIATION;
22 FIRST AMERICAN TRUSTEE SERVICING
23 SOLUTIONS, LLC; CITIMORTGAGE, INC.;
24 DOES I-V, inclusive; and ROE
25 CORPORATIONS I-V, inclusive,

**FEDERAL NATIONAL MORTGAGE
ASSOCIATION AND FEDERAL
HOUSING FINANCE AGENCY'S
MOTION TO STAY DISCOVERY**

26 Defendants,

27 and

28 FEDERAL HOUSING FINANCE AGENCY,
as Conservator of the Federal National
Mortgage Association,

Intervenor.

1 FEDERAL NATIONAL MORTGAGE
2 ASSOCIATION, a government sponsored
3 entity; and FEDERAL HOUSING FINANCE
4 AGENCY, as Conservator of the Federal
5 National Mortgage Association,

6 Counterclaimants,

7 vs.

8 SUMMIT CANYON RESOURCES, LLC, a
9 Nevada limited liability company;
10 WATERFALL HOMEOWNERS
11 ASSOCIATION, a Nevada non-profit
12 corporation,

13 Counter-Defendants.

14 **I. INTRODUCTION**

15 Defendant/Counter-Plaintiff Federal National Mortgage Association (“Fannie Mae”) and
16 Intervenor Federal Housing Finance Agency, as Conservator of Fannie Mae (“FHFA,” or the
17 “Conservator”), pursuant to Federal Rule of Civil Procedure 42(a), respectfully move this Court
18 for a stay of discovery pursuant to Fed. R. Civ. P. 26. Defendant CitiMortgage, Inc. consents to
19 a stay of discovery. Plaintiff /Counter-Defendant Summit Canyon Resources LLC does not
20 consent to a stay of discovery. Fannie Mae and FHFA have been unable to obtain Counter-
21 Defendants Waterfall Homeowners Association’s and Alessi & Koenig’s position on the
22 requested stay of discovery as of the date of this motion.

23 Discovery in this matter should be stayed pending resolution of Fannie Mae’s and
24 FHFA’s contemporaneously filed Motion to Consolidate this action with a defendants’ class
25 action that Fannie Mae, FHFA, and the Federal Home Loan Mortgage Corporation (“Freddie
26 Mac,” and with Fannie Mae, the “Enterprises”) have filed in this District (the “Putative Class
27 Action”). The purpose of the consolidation motion, and of similar motions filed or to be filed in
28 at least five related actions, is to facilitate the efficient management of a growing number of
related cases that, despite minor, non-dispositive factual differences, all turn on the same
dispositive legal issue: whether a homeowner’s association foreclosure sale conducted under
Nev. Rev. Stat. § 116.3116(2) (“HOA Sale”) may extinguish the Enterprises’ property interests.

1 The Enterprises and FHFA argue and numerous decision in this District confirm, that 12 U.S.C.
 2 § 4617(j)(3) (“Federal Foreclosure Bar”) precludes an HOA Sale from extinguishing the
 3 Enterprises’ property interests and preempts any contrary state law.

4 As described in the Motion to Consolidate, the interests of efficiency and judicial
 5 economy would be served by consolidation of this action with the Putative Class Action. The
 6 efficiencies to this Court and to the parties would be diminished if the parties were required to
 7 pursue discovery while the Motion to Consolidate is pending. Accordingly, a stay of discovery
 8 would advance the purposes underlying the Federal Rules of Civil Procedure, *see* Fed. R. Civ. P.
 9 1, and therefore be appropriate here.

10 **II. BACKGROUND¹**

11 On March 6, 2015, Summit Canyon filed quiet title and declaratory relief claims against
 12 Fannie Mae and other defendants. (Compl. ¶¶ 16-33.) Summit Canyon argues that by
 13 foreclosing on a senior lien, the HOA Sale extinguished all junior liens and encumbrances,
 14 including the Subject Deed of Trust. (*Id.* ¶ 28.) On April 9, 2015, Fannie Mae removed this case
 15 to federal court. (Dkt. 1.)

16 On May 27, 2015, FHFA moved to intervene in the action. (Dkt. 28.) That motion was
 17 granted on July 20, 2015. (Dkt. 44.) Fannie Mae and FHFA asserted defenses and
 18 counterclaims based on, among other things, the argument that the Federal Foreclosure Bar
 19 preempts the State Foreclosure Statute and therefore prevents the extinguishment of the Deed of
 20 Trust. (Dkt. 4, 46.)

21 The Court granted the parties’ joint motion for a stay of discovery on August 4, 2015.
 22 (Dkt. 49.) To date, no party has filed a dispositive motion. FHFA and Fannie Mae have filed a
 23 Motion to Consolidate this case with the Putative Class Action concurrently with this motion.
 24

25
 26
 27 ¹ FHFA and Fannie Mae refer the Court to the factual description of this case in their
 28 concurrently filed Motion to Consolidate.

1 **III. ARGUMENT**

2 **A. Legal Standard Governing Motions to Stay Discovery**

3 District courts have “wide discretion in controlling discovery.” *See Little v. City of*
 4 *Seattle*, 863 F.2d 681, 685 (9th Cir. 1988); *see also Tradebay, LLC v. eBay, Inc.*, 278 F.R.D. 597,
 5 601 (D. Nev. 2011) (“The district court has wide discretion in controlling discovery, and its
 6 rulings will not be overturned in the absence of a clear abuse of discretion.”).

7 In this District, courts “evaluate the propriety of an order staying or limiting discovery
 8 with the goal of accomplishing the objectives of Rule 1, [which is an evaluation of] whether it is
 9 more just to speed the parties along in discovery and other proceedings while a dispositive
 10 motion is pending, or whether it is more just to stay or limit discovery and other proceedings to
 11 accomplish the inexpensive determination of the case.” *Tradebay*, 278 F.R.D. at 603. Indeed,
 12 courts may limit discovery “upon showing of good cause or where ‘justice requires to protect a
 13 party or person from annoyance, embarrassment, oppression, or undue burden or expense.’” *Id.*
 14 at 601 (quoting *Wagh v. Metris Direct, Inc.*, 363 F.3d 821, 829 (9th Cir. 2003)). In addition, a
 15 stay of discovery may be appropriate to “further[] the goal of efficiency for the court and the
 16 litigants.” *Id.* Accordingly, “when there are no factual issues . . . and the issues before the Court
 17 are purely questions of law that are potentially dispositive,” this Court has approved stays of
 18 discovery. *See FDIC v. Simon*, No. 2:11-cv-01001, 2011 WL 4961974, *1 (D. Nev. Oct. 18,
 19 2011).

20 **B. A Stay of Discovery Pending Resolution of the Motion to Consolidate Would
 21 Further the Interests of Judicial Economy and Conservation of Party
 22 Resources**

23 A stay of discovery is appropriate in this case. Consolidating the instant case with the
 24 Putative Class Action and other similarly situated, related cases for briefing and argument of a
 25 potentially dispositive summary judgment motion based on the preemptive effect of the Federal
 26 Foreclosure Bar would avoid duplicative effort by the parties and advance judicial efficiency.
 27 FHFA and/or Fannie Mae are parties to more than 30 similar cases and Plaintiff is a party to at
 28 least one other related case. Consolidation with the Putative Class Action would reduce the costs

1 and burden of piecemeal litigation and further the Conservator's goal to "preserve and conserve
 2 the assets and property" of the Enterprises. 12 U.S.C. § 4617(b)(2)(B)(iv).

3 While consolidation would reduce the time spent and costs incurred in litigating the same
 4 dispositive issue in a growing number of cases and facilitate the conservation of taxpayer funds
 5 that support FHFA and the Enterprises in conservatorship, such efficiencies would be diminished
 6 without a stay of discovery until the Motion to Consolidate is resolved by this Court. Although
 7 FHFA and Fannie Mae believe the dispositive issue can be resolved without the need for any
 8 discovery, whether is discovery is necessary should be decided by the court that will ultimately
 9 hear the substantive claims in this action. Thus, launching into discovery before the Motion to
 10 Consolidate is resolved could put this case into a different posture from other cases for which
 11 consolidation will be sought, and could therefore create more complex and inefficient
 12 coordination problems for the parties and the court that will ultimately hear any cases that are
 13 consolidated.

14 Plaintiff may argue that this case features some factual difference which should prevent
 15 the case from being consolidated and/or which require discovery. Not so. In all of the related
 16 cases the dispositive legal issue is identical, and subtle differences in the underlying facts are
 17 immaterial to the resolution of that issue. Indeed, despite certain factual differences regarding
 18 the assignment and recordation of the relevant deeds of trust, eight recent decisions in this
 19 District have resolved dispositive motions on this same issue in favor of FHFA and the
 20 Enterprises.²

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 22
 23 2 See *Skylights v. Byron*, No. 2:15-cv-0043-GMN-VCF, 2015 WL 3887061 (D. Nev. June
 24, 2015); *Elmer v. Freddie Mac.*, No. 2:14-cv-01999-GMN-NJK, 2015 WL 4393051 (D. Nev.
 25 July 13, 2015); *Premier One Holdings, Inc. v. Fannie Mae*, No. 2:14-cv-02128-GMN-NJK, 2015
 26 WL 4276169 (D. Nev. July 13, 2015); *Williston Investment Grp., LLC v. JP Morgan Chase
 27 Bank, NA*, No. 2:14-cv-02038-GMN-PAL, 2015 WL 4276144 (D. Nev. July 13, 2015); *My
 28 Global Village, LLC v. Fannie Mae*, No. 2:15-cv-0211-RCJ-NJK, 2015 WL 4523501 (D. Nev.
 July 27, 2015); *1597 Ashfield Valley Trust v. Fannie Mae*, No. 2:14-cv-2123-JCM-CWH, 2015
 WL 4581220 (D. Nev. July 28, 2015); *Fannie Mae v. SFR Investments Pool 1, LLC*, No. 2:14-
 CV-2046-JAD-PAL, 2015 WL 5723647 (D. Nev. Sept. 28, 2015); *Saticoy Bay, LLC Series
 1702 Empire Mine v. Fannie Mae*, No. 2:14-CV-01975-KJD-NJK, 2015 WL 5709484 (D. Nev.
 Sept. 29, 2015).

1 Here, as in *Skylights*, Fannie Mae's property interest is evident from the recorded
 2 assignment of the Deed of Trust to Fannie Mae prior to the HOA Sale. But even without that
 3 assignment, and as discussed in the Motion to Consolidate, any argument concerning whether or
 4 when the Deed of Trust was assigned to Fannie Mae would be immaterial in light of (1) Nevada
 5 law, which follows the Restatement approach as recently clarified by the Nevada Supreme Court
 6 in *In re Montierth*, 354 P.3d 648 (Nev. 2015), and (2) the publicly accessible servicing
 7 guidelines of Fannie Mae and Freddie Mac that govern their relationships with their servicers.
 8 As FHFA and Fannie Mae have explained in their Motion to Consolidate, these issues can and
 9 should be resolved without discovery; in any event, because they go to the merits of the case
 10 rather than merely to consolidation, they provide no reason for any discovery to take place before
 11 the Motion to Consolidate is resolved.

12 FHFA and Fannie Mae do not seek this stay pending the resolution of a dispositive
 13 motion, as none is currently pending, but the basis for the request is similar. Absent
 14 consolidation, FHFA and Fannie Mae would file a summary judgment motion in this action that
 15 would be essentially identical to the summary judgment motions already filed in the other related
 16 cases and future dispositive motion briefing in the Putative Class Action. A stay in this case
 17 until it is consolidated with the Putative Class Action will allow the parties to submit one set of
 18 briefs on the dispositive legal issues in this case. Accordingly, a stay is justified here because it
 19 would "secure the just, speedy, and inexpensive determination" of this action. Fed. R. Civ. P. 1.

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1 **IV. CONCLUSION**

2 Based on the foregoing, Fannie Mae and FHFA respectfully request that the Court stay
3 discovery pending the resolution of the Motion for Consolidation.

4 DATED this 13th day of October, 2015.

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CERTIFICATE OF SERVICE

Pursuant to F.R.C.P. 5(b) and Electronic Filing Procedure IV(B), I certify that on the 13th day of October, 2015, a true and correct copy of the **MOTION TO STAY DISCOVERY**, was transmitted electronically through the Court's e-filing electronic notice system to the attorney(s) associated with this case. If electronic notice is not indicated through the court's e-filing system, then a true and correct paper copy of the foregoing document was delivered via U.S. Mail.

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